

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Agriculture

SPONSOR(S): Albritton

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 2 N	Kaiser	Blalock
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

This bill addresses several issues relating to agriculture in the state.

- Current law prohibits a county from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances. Current law also permits any county that, before March 1, 2009, had adopted certain ordinances or resolutions, to continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, under certain circumstances. The bill replaces the word “county” with “governmental entity” in the provisions described above to expand the types of governmental entities that the above provisions apply to.
- Current law provides that a person who uses motor fuel for agricultural or aquacultural purposes in farm equipment that has not been driven or operated upon the public highways of the state is entitled to a refund of state taxes imposed on the motor fuel. The public highway use restriction does not apply to the movement of a farm vehicle or farm equipment between farms. The bill adds citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above. The bill also amends the Florida Uniform Traffic Control Law to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by such machinery.
- The bill revises the powers and duties of the Department of Agriculture and Consumer Services (department) to include enforcing the state laws and rules relating to the use of commercial feed stocks. In addition, the bill requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.
- The bill also provides that a person, who knowingly enters any nonpublic area of a farm, and without prior written consent of the farm’s owner or the owner’s authorized representative, operates the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation commits a first degree misdemeanor. The bill provides definitions and certain exceptions. The effective date for this provision of the bill is October 1, 2012.

The bill appears to have a fiscal impact on state and local governments by exempting certain individuals from state and local fees and taxes. However, the Revenue Estimating Conference has not yet reviewed this legislation, so the fiscal impacts are currently indeterminate. The bill may also have a negative jail bed impact on local governments.

Except as noted above, the bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1021b.CRJS

DATE: 1/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Stormwater Management Assessments

In 2011, the Legislature overrode the veto of CS/HB 7103, which passed the House and Senate during the 2010 Legislative Session. CS/HB 7103, in part, amended s. 163.3162(3)(b), F.S., to provide that a county cannot charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP), or works-of-the-district permit or implements best management practices (BMPs)¹.

In addition, CS/HB 7103 amended s. 163.3162(3)(c), F.S., to provide that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;²
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of CS/HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands. However, since the stormwater management assessment provisions described above currently only apply to counties, they do not currently apply to the City of Palm Coast.

Effect of Proposed Changes

The bill creates s. 163.3162(2)(d), F.S., to define the term “governmental entity” as “having the same meaning as provided in s. 164.1031, F.S.”³, and amends ss. 163.3162(3)(b) and 163.3162(3)(c), F.S., by replacing the word “county” with the words “governmental entity” in the provisions of those sections described above. This has the effect of expanding the types of entities that are prohibited from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has an NPDES permit, ERP, or works-of-the-district permit or implements best management practices (BMPs), and that can continue, if certain requirements are met, to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural.

¹ The BMPs must have been adopted as rules under Chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

² *Id.*

³ Governmental entity is defined in s. 164.1031, F.S., to include local and regional governmental entities. “Local governmental entities” includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. “Regional governmental entities” includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

Motor Fuel Tax Refund

Section 206.41(4)(c), F.S., provides that a person who uses motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes that has paid the local option fuel tax, an additional tax designated as the “State Comprehensive Enhanced Transportation System Tax,” or fuel sales tax, is entitled to a refund of such tax. For the purpose of establishing what activities qualify for the tax refund, “agricultural and aquacultural purposes” means “motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction from being driven or operated upon the public highways of the State does not apply to the movement of a farm vehicle or farm equipment between farms.

Effect of Proposed Changes

The bill amends s. 206.41(4)(c), F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

Transporting Farm Products

Section 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., provides that, notwithstanding any other provisions of law, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law.

Effect of Proposed Changes

The bill amends s. 316.515(5)(a), F.S., to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by specified equipment.

DACS – Rulemaking Authority

The Department of Agriculture and Consumer Services (department) has the authority pursuant to s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds.

Chapter 580, F.S., provides for the regulation of commercial feed and feedstuff. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and provides that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable. Such rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, non-nutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and their products, which are used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feedstuff.

- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required by Florida law.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribe feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.

Effect of Proposed Changes

The bill amends s. 570.07, F.S., to give the department the authority to enforce laws and rules of the state relating to the use of commercial feed and feedstuff.

The bill also amends s. 580.036, F.S., to require the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

Unauthorized Entry on Farm

Section 810.08, F.S., provides that a person commits the offense of trespass in a structure or conveyance⁴ when they, without being authorized, licensed, or invited, willfully enter or remain in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuse to do so. The offense is generally a second degree misdemeanor⁵ but can be enhanced in certain instances (e.g., if a human was present in the structure or conveyance, if a firearm was carried, etc.).⁶

Section 810.09, F.S., provides that a person trespasses on property other than a structure or conveyance when they, without being authorized, licensed, or invited, willfully enter upon or remain in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.11, F.S.; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

The offense is a generally a first degree misdemeanor⁷ but can be enhanced depending on the type of premises trespassed upon.⁸

Florida currently prohibits persons from intercepting wire, oral, or electronic communications and from using certain devices to intercept wire, oral, or electronic communications unless prior consent has been given by both parties.⁹ Florida also prohibits persons from engaging in video voyeurism, which generally involves viewing or recording a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy.¹⁰ Currently, Florida law does not contain any provisions that specifically make it a crime for a person to covertly make an audio or video recording in agricultural production areas.

⁴ Section 810.011, F.S., defines the terms "structure" and "conveyance."

⁵ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁶ Section 810.08, F.S.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ For example, it is a third degree felony for a person to trespass upon lands posted as commercial horticulture property and agricultural sites for testing and research. Section 810.09(2)(e) and (f), F.S.

⁹ Section 934.03, F.S.

¹⁰ Section 810.145, F.S.

In order to expose animal abuse on farms and in agricultural processing facilities around the country, certain people pose as potential employees and record activities on the farm or processing facility using hidden cameras. In late 2010, an undercover investigator for the Humane Society of the United States (HSUS) was employed at the Cal-Maine egg plant in Waelder, Texas for 28 days.¹¹ A video obtained by the investigator while posing as an employee documents claims of unsanitary conditions and cruel treatment of the animals and was posted on the HSUS website. Another group, Mercy for Animals, a non-profit animal rights organization focused on promoting a vegetarian diet, sends undercover investigators into agricultural processing facilities to document claims of inhumane treatment of animals and posts these videos on the internet.¹²

Effect of Proposed Changes

The bill creates s. 810.127, F.S., to make it a first degree misdemeanor for a person to knowingly enter upon any nonpublic area of a farm and, without prior written consent of the farm's owner or the owner's authorized representative, operate the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation. This offense does not apply to:

- An employee or agent of the Department of Agriculture and Consumer Services acting under s. 570.15, F.S.
- An employee or agent of the Department of Business and Professional Regulation acting under Chapter 450, F.S.
- A law enforcement officer conducting a lawful inspection or investigation.
- Any other government employee conducting official regulatory business.
- An engineer or his or her agent or employee acting under s. 471.027, F.S.
- A land surveyor and mapper or his or her subordinate, agent, or employee, as necessary for conducting any activity under chapter 472, F.S.
- A person acting on behalf of an insurer for inspection, underwriting, or claims purposes.

The bill provides the following definitions:

- "Audio or video recording function" means "the capability of a camera, an audio or video recorder, or any other device to record, store, transfer, broadcast, or transmit sound or images by means of any technology now known or later developed, regardless of the recording media or format, including, but not limited to, photographs or film; magnetic storage, including audio cassette tapes, videocassette tapes, hard disk drives, and floppy disk drives; flash memory, including memory cards, flash drives, and solid state drives; optical disc storage media, including compact discs, digital versatile discs, and blu-ray discs; streaming media; and any other electrical, magnetic, optical, or form of data storage."
- "Farm", "farm operation", and "farm product" have the same meaning as provided in s. 823.14, F.S.¹³ For the purposes of this section of law, the term "farm" also includes any other land upon which a legal farm operation is being conducted and upon which farm products are being produced.

This section of the bill takes effect October 1, 2012.

¹¹ See <http://vegan.com/blog/2010/11/17/hsus-undercover-investigation-at-texas-cal-maine-egg-farm/html> (Last visited on 1/2/12)

¹² See <http://www.mercyforanimals.org/html> (Last visited on 1/2/12)

¹³ Section 823.14, F.S., defines "farm" as "the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products". "Farm operation" means "all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor". "Farm product" means "any plant, as defined in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom".

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2: Amends s. 206.41, F.S., relating to state taxes imposed on motor fuel.

Section 3: Amends s. 316.515, F.S., relating to maximum width, height, length.

Section 4: Amends s. 570.07, F.S., relating to Department of Agriculture and Consumer Services; functions, powers, and duties.

Section 5: Amends s. 580.036, F.S., relating to powers and duties.

Section 6: Creates s. 810.27, F.S., relating to unauthorized entry and use of recording device on farm; penalties.

Section 7: Providing an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

By providing a tax refund for fuel taxes on citrus harvesting equipment or citrus fruit loaders, the state will experience a loss of sales tax revenue. Because this bill has not yet been reviewed by the conference, the fiscal impact on state government is indeterminate at this time.

2. Expenditures:

The bill does not appear to have any impact of state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

In 2009, the Revenue Estimating Conference (conference) made the following comment regarding identical legislation that is in section 1 of the bill: "Provisions of this bill that prohibit a county or municipality from imposing an assessment or fee for stormwater management on certain lands will have a negative indeterminate impact on local government revenues as determined by the conference."

2. Expenditures:

The bill creates a new misdemeanor offense, which may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

The bill provides relief to citrus producers who pay certain taxes on motor fuel for use in citrus harvesting equipment or citrus fruit loaders.

Persons who are convicted of conducting audio or video surveillance on a farm without the owner's permission may incur a fine of \$1,000.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits a governmental entity from imposing an assessment or fee for stormwater management on certain lands. However, because this legislation has not yet been reviewed by the Revenue Estimating Conference, it is unclear if the reduction in revenues meets the threshold of the mandate or if an exemption applies.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES